

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION,

NO. CV-11-3045-EFS

Plaintiff,

v.

**ORDER RULING ON THE PARTIES'  
DISCOVERY-RELATED MOTIONS,  
SETTING AN EXPEDITED HEARING,  
AND CAUTIONING COUNSEL**

GLOBAL HORIZONS, INC., d/b/a  
Global Horizons Manpower, Inc.;  
GREEN ACRE FARMS, INC.; VALLEY  
FRUIT ORCHARDS, LLC; and DOES  
1-10 inclusive,

Defendants.

A telephonic hearing occurred in the above-captioned matter on November 20, 2012. Plaintiff Equal Employment Opportunity Commission (EEOC) was represented by Lorena Garcia-Bautista and Elizabeth Esparza-Cervantes. Beth Joffe appeared on behalf of Defendant Green Acre Farms, Inc. ("Green Acre") and Valley Fruit Orchards, LLC ("Valley Fruit") (collectively, "Grower Defendants"). Before the Court was the Grower Defendants' Motion to Compel Rule 26(a)(1) Disclosures, ECF No. [201](#), and the EEOC's Motion for Protective Order Re: Immigration Status, Information Related to Immigration Status, and Identities of Class Members, ECF No. [217](#). After reviewing the record and relevant authority and hearing from counsel, the Court was fully informed. This Order supplements and memorializes the Court's oral rulings. Following the

1 hearing, the Court received a fax from the Grower Defendants' counsel on  
2 November 26, 2012; this Order addresses that faxed document as well.

3 **A. Background**

4 Each of the Grower Defendants entered into separate contracts with  
5 Global Horizons, Inc. ("Global") for Global to provide H-2A guest workers  
6 to the Grower Defendants' orchards. Consistent with the contracts,  
7 Global provided Thai individuals with H-2A guest worker visas to the  
8 Grower Defendants' orchards to work in 2004 and 2005.

9 The Thai workers contend that Global and the Grower Defendants  
10 subjected them to discriminatory and intolerable working conditions. On  
11 April 18, 2006, the Thai workers ("Claimants") filed identical charges  
12 of discrimination with the EEOC against these entities. On August 26,  
13 2010, the EEOC issued Letters of Determination as to the 1) 73 charges  
14 of discrimination filed against Green Acre Farms and 2) 29 charges of  
15 discrimination filed against Valley Fruit. These Letters of  
16 Determination named the Claimants and were sent to the Grower Defendants.

17 In 2011, the Claimants filed this class lawsuit against Global and  
18 the Grower Defendants, naming Marut Kongpia and Laphit Khadthan as class  
19 representatives. ECF No. [1](#). On February 1, 2012, a Scheduling Order was  
20 entered, setting an initial disclosure deadline of March 8, 2012. ECF  
21 No. [54](#). On March 1, 2012, an Order was entered staying discovery based  
22 on a federal criminal prosecution brought against the owner and certain  
23 employees of Global in the District of Hawaii, *United States v. Orian,*  
24 *et al.*, No. 10-CR-00576-SOM (D. Haw.); however, the civil stay did not  
25 extend to motions practice or initial disclosures under Federal Rule of  
26 Civil Procedure 26(a)(1)(A).

1 On March 7, 2012, the EEOC served its initial disclosures, which  
2 were signed by EEOC counsel Ms. Esparza-Cervantes. ECF No. [202](#)-1. The  
3 initial disclosures identified the Claimants by first and last initials  
4 and indicated at which farm(s) the Claimant worked; the EEOC mentioned  
5 that it would disclose the Claimants' names subject to a protective  
6 order.

7 On March 20, 2012, the EEOC filed its First Amended Complaint,  
8 asserting the following Title VII claims under 42 U.S.C. §§ 2000e-5 and  
9 2000e-6: 1) Defendants engaged in a pattern or practice of discriminatory  
10 treatment toward the Claimants because of their national origin or race,  
11 2) Defendants subjected the Claimants to a hostile work environment  
12 because of their race or national origin, thereby constructively  
13 discharging the Claimants, 3) Defendants discriminated against the  
14 Claimants because of their race or national origin, and 4) Defendants  
15 retaliated against the Claimants for complaining about the subjected-to  
16 discrimination and hostile work environment. ECF No. [141](#). On April 6,  
17 2012, the Grower Defendants filed motions to dismiss the First Amended  
18 Complaint for failure to state a claim, ECF Nos. [150](#) & [154](#). On July 27,  
19 2012, the Court granted in part and denied in part the Grower Defendants'  
20 motions to dismiss: 1) dismissing the disparate treatment claim and  
21 related pattern and practice claim against all Grower Defendants, 2)  
22 dismissing the retaliation claim and related pattern and practice claim  
23 against Valley Fruit, 3) dismissing the claims against the Grower  
24 Defendants based on non-orchard-related matters, 4) dismissing the claims  
25 exceeding the 300-day statute of limitations, 5) permitting the hostile  
26 work environment and constructive discharge claims and related pattern

1 and practice claims against the Grower Defendants as to orchard-related  
2 matters, and 6) permitting the retaliation claim and related pattern and  
3 practice claim against Green Acre as to orchard-related matters. ECF No.  
4 [178](#). On August 1, 2012, the Court lifted the civil-discovery stay  
5 because the criminal proceeding in the District of Hawaii was dismissed.  
6 ECF No. [184](#).

7 On October 4, 2012, Ms. Esparza-Cervantes emailed defense counsel  
8 about entering into a stipulated protective order regarding the  
9 Claimants' names and immigration status; a telephone conference was set  
10 for October 9, 2012. ECF No. [219](#)-1. On October 5, 2012, the Grower  
11 Defendants produced 3,000 pages of discovery in response to the EEOC's  
12 First Requests for Production of Documents, including Global invoice  
13 records, which list the Thai workers' names and hours worked at the  
14 Grower Defendants' orchards for that billing period.

15 During the October 9, 2012 telephonic conference, Ms.  
16 Esparza-Cervantes and Derek Li participated for the EEOC, and Beth Joffe  
17 and Brendan Monahan participated for the Grower Defendants. On October  
18 10, 2012, Ms. Joffe wrote a five-page letter to memorialize the October  
19 9, 2012 telephone conference. ECF No. [231](#)-3. The letter discussed the  
20 Grower Defendants' understanding as to the parties' respective positions  
21 regarding damage disclosures and the discovery of the Claimants' names  
22 and immigration status. *Id.* Ms. Joffe's letter concluded, "If we do not  
23 hear from you [by Monday, October 15, 2012], I think it is fair to say  
24 that attempts to confer have been exhausted and we will file a motion  
25 accordingly." *Id.*

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1 On October 12, 2012, Ms. Esparza-Cervantes sent two emails to  
2 defense counsel. In her first email, Ms. Esparza-Cervantes emailed Mr.  
3 Monahan, thanking him for his letter<sup>1</sup> regarding the October 9, 2012  
4 meet-and-confer and indicating that she would respond to the letter by  
5 the end of the following week. ECF No. [219](#)-4. In her second email, Ms.  
6 Esparza-Cervantes emailed both Mr. Monahan and Ms. Joffe to inquire  
7 whether they would be amenable to a December hearing date on the EEOC's  
8 anticipated motion for a protective order. ECF No. [219](#)-5. It is unclear  
9 whether defense counsel received or read these emails; however, it is  
10 clear that defense counsel did not respond to either email.

11 At 1:54 p.m. on October 22, 2012, the Grower Defendants filed their  
12 motion to compel. ECF No. [201](#). Later that day at 2:47 p.m., unaware  
13 that the Grower Defendants had filed their motion, Ms. Esparza-Cervantes  
14 emailed Ms. Joffe and Mr. Monahan stating that she "obtained all  
15 information I needed to respond to your letter following up on our  
16 October 9, 2012 conference call regarding the EEOC's need to protect  
17 immigration status and claimant identity information," and she would  
18 follow-up with a proposed protective order on the issues she believed  
19 were resolved. ECF No. [219](#)-2. Attached to the email was an October 22,  
20 2012-dated letter, wherein she states, "It is clear from our discussions  
21 that we have reached an impasse as to the EEOC's efforts to protect the  
22 Claimants' immigration status from disclosure but we have resolved a way

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23  
24 <sup>1</sup> It is unknown why Ms. Esparza-Cervantes sent this email to Mr.  
25 Monahan rather than to Ms. Joffe, the author of the October 10, 2012  
26 letter.

1 to protect the Claimants' identity from protection [sic]." Id. Ms.  
2 Esparza-Cervantes also indicates in this letter that as of October 9,  
3 2012, she is "new to the case" and that she set up the telephone  
4 conference to discuss a protection order and, therefore, she was not  
5 prepared to discuss the EEOC's initial damage disclosures during the  
6 October 9, 2012 telephone conference.

7 Later that same day at 4:39 p.m., Ms. Esparza-Cervantes emailed  
8 defense counsel again. Although expressing her surprise at the Grower  
9 Defendants' filed motion to compel, Ms. Esparza-Cervantes attached to the  
10 email a draft stipulated protective order, which protected the Claimants'  
11 names from public disclosure and prohibited discovery into the Claimants'  
12 immigration-status information. Shortly after Ms. Esparza-Cervantes sent  
13 this second email on October 22, 2012, she called Ms. Joffe. Ms. Joffe  
14 indicated she was not prepared to discuss either of Ms.  
15 Esparza-Cervantes' emails sent that day because she had not read them but  
16 she would call Ms. Esparza-Cervantes to discuss them later.

17 Rather than return Ms. Esparza-Cervantes' call, Ms. Joffe wrote a  
18 four-page letter to Ms. Esparza-Cervantes the next day. ECF No. 219-7.  
19 In this letter, Ms. Joffe questioned Ms. Esparza-Cervantes' claim that  
20 she is new to the case given her signature on the March 7, 2012 initial  
21 disclosures. Ms. Joffe advised that the Grower Defendants would not  
22 agree to the draft protective order.

23 Counsel proceeded to communicate with each other by email; these  
24 communications were largely unproductive.

25 On October 30, 2012, the EEOC filed its motion for protective order.  
26 ECF No. 217. Both the EEOC's motion and the Grower Defendants' motion  
were set for hearing on November 20, 2012, and briefing was expedited.

1 ECF No. 221. On November 14, 2012, the Grower Defendants filed  
2 Objections and Request to Strike Improper Evidence and Argument Submitted  
3 in Support of EEOC's Reply in Support of Motion for Protective Order.  
4 ECF No. [236](#). On November 16, 2012, the EEOC filed two documents in  
5 response to the Grower Defendants' supplemental filing. ECF Nos. [240](#) &  
6 [241](#). On November 19, 2012, the Court barred the parties from further  
7 supplementing the pending motions. ECF No. 243.

8 **B. Supplemental Filings**

9 Because neither party filed a motion seeking leave to supplement the  
10 fully-briefed motions, the Court strikes 1) the Grower Defendants'  
11 Objections and Request to Strike Improper Evidence and Argument Submitted  
12 in Support of EEOC's Reply in Support of Motion for Protective Order, ECF  
13 No. [236](#), 2) the EEOC's Opposition to Defendants' Motion to Strike  
14 Evidence and Objections Re: Evidence Supporting EEOC's Reply Re: EEOC's  
15 Motion for Protective Order, ECF No. [240](#), and 3) Ms. Esparza-Cervantes'  
16 Declaration in Support of Opposition to Defendants' Improperly Filed  
17 Motion to Strike Evidence and Objections Re: Evidence Supporting EEOC's  
18 Reply Re: EEOC's Motion for Protective Order, ECF No. [241](#). If a party  
19 determines it has a need to exceed Local Rule 7.1's motion-response-reply  
20 limitation, that party must file a properly-noted motion seeking leave  
21 to file supplementary filings.

22 **C. Grower Defendants' Motion to Compel Rule 26(a)(1) Disclosures**

23 The Grower Defendants' motion to compel requests an Order requiring  
24 the EEOC to 1) disclose the Claimants' full names, and 2) supplement its  
25 initial damage disclosures. The EEOC opposes the motion in part and  
26 contends that the Grower Defendants failed to sufficiently meet and  
confer prior to filing their motion.

1        1.    Damage Disclosures

2        After the Grower Defendants filed their motion to compel, the EEOC  
3 supplemented its damage disclosures. At the hearing, counsel for the  
4 EEOC confirmed that the requested emotional distress damages are  
5 restricted to the emotional distress allegedly suffered by the Claimants  
6 in 2004 and 2005 while working at the Grower Defendants' orchards.  
7 Relying on counsel's confirmation, the Grower Defendants withdrew their  
8 motion to compel in regard to damage disclosures. Accordingly, the  
9 Grower Defendants' motion is denied as moot in this regard.

10       2.    Meet and Confer

11       The EEOC contends the Grower Defendants failed to satisfy Local Rule  
12 37.1(b)'s meet-and-confer requirement before filing the motion to compel.  
13 Local Rule 37.1(b) states that a motion to compel "will not be heard  
14 unless the parties have conferred and attempted to resolve their  
15 differences." LR 37.1(b).

16       The Court finds under the circumstances that the Grower Defendants  
17 sufficiently conferred with the EEOC regarding the disclosure of the  
18 Claimants' names before filing the motion to compel. Given the EEOC's  
19 statements at the October 9, 2012 conference, it was clear to the Grower  
20 Defendants' counsel that the EEOC would not agree to publicly disclose  
21 the Claimants' names. The Grower Defendants waited a sufficient amount  
22 of time since the March 8, 2012 initial-disclosure deadline for the EEOC  
23 to disclose the Claimants' names. Not receiving this information by  
24 October 22, 2012 (8 business days after the October 9, 2012 conference),  
25 the Grower Defendants appropriately filed the motion to compel disclosure  
26 of the Claimants' identities.



1        3.    Claimants' Names

2        The Grower Defendants ask the Court to require the EEOC to disclose  
3 the full names for all of the Claimants and to allow the Claimants' names  
4 to be listed in public filings. The EEOC opposes this request and seeks  
5 permission to only disclose the Claimants' names to defense counsel,  
6 contending that public disclosure of the Claimants' names will result in  
7 retaliation and harm to the Claimants.<sup>2</sup>

8        Federal Rule of Civil Procedure 26(a)(1) requires each party to  
9 disclose "the name and, if known, the address and telephone number of  
10 each individual likely to have discoverable information—along with the  
11 subjects of that information—that the disclosing party may use to support  
12 its claims or defenses, unless the use would be solely for impeachment."  
13 Fed. R. Civ. P. 26(a)(1)(A)(i). Yet, the Court may enter a protective  
14 order "to protect a party or person from annoyance, embarrassment,  
15 oppression, or undue burden or expense." Fed. R. Civ. P. 26(c)(1).

16        The parties agree the Claimants possess discoverable information.  
17 Yet, the EEOC argues that the Claimants' names should not be made public  
18 because the Claimants fear they will be deported and/or they or their  
19 families will be physically or financially harmed.

20        Under the present record, the Court finds the EEOC failed to present  
21 any evidence to support the claimed fear that the Claimants are at  
22 greater risk of deportation and/or physical or financial harm if their  
23 names are disclosed to defense counsel without restriction. No Claimant  
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25        <sup>2</sup> The EEOC's motion for protective order seeks, in part, to limit  
26 the disclose of the Claimants' names to defense counsel and to prohibit  
any use of the Claimants' names in public filings.

1 provided a declaration to support the fears and harms alleged in the  
2 First Amended Complaint. And no evidence was filed to establish that the  
3 Grower Defendants or Global retaliated against the named Claimants, Marut  
4 Kongpia and Laphit Khadthan, since they filed claims of discrimination  
5 with the EEOC in 2006 or this lawsuit in April 2011. *C.f. Does I thru*  
6 *XXII v. Advanced Textile Corp.*, 214 F.3d 1058 (9th Cir. 2000) (allowing  
7 plaintiffs to proceed under pseudonyms because several plaintiffs  
8 testified that they feared the Chinese government would arrest them or  
9 their families if they complained of the present working conditions).  
10 In addition, there is no evidence that any of the Claimants returned to  
11 Thailand and are at risk of retaliation by Global-affiliated individuals  
12 residing therein.

13 Simply stated, EEOC has presented no evidence that the Claimants,  
14 who have not worked for Global since 2005, are at greater risk of being  
15 deported or suffering physical or financial harm by having their names  
16 publicly used in connection with this lawsuit. Therefore, the Court  
17 grants the Grower Defendants' motion to compel and requires the EEOC to  
18 disclose the Claimants' names: this disclosure is not subject to any  
19 confidentiality limitations.

20 4. Fees and Costs

21 The Grower Defendants ask the Court for an award of attorneys fees  
22 and costs for the EEOC's failure to comply with Rule 26(a). The Court  
23 declines to award the Grower Defendants' attorneys fees and costs at this  
24 time. Each party bears their own attorneys' fees and costs incurred in  
25 regard to the motions heard at the November 20, 2012 hearing.

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1 **D. EEOC's Motion for Protective Order Re: Immigration Status,**  
2 **Information Related to Immigration Status, and Identities of Class**  
3 **Members**

4 As discussed above, the EEOC seeks a protective order to allow only  
5 limited disclosure of the Claimants' names to defense counsel; this  
6 aspect of the EEOC's motion is denied for the reasons set forth above.

7 The EEOC also seeks a protective order prohibiting the Grower  
8 Defendants' discovery of the Claimants' "immigration-status information,"  
9 which the EEOC defines as: the Claimants' immigration status after they  
10 worked for Defendants, employment experience after they worked for  
11 Defendants, marital status, educational background, date of birth, prior  
12 criminal convictions, business or social relationships with any potential  
13 non-Claimant witness or current or former employee of Defendants, prior  
14 legal experience, information on their post-Global employment  
15 applications, use of other names, and duration of residence in the United  
16 States. ECF No. [217](#)-1. At the hearing, the Grower Defendants clarified  
17 their position regarding immigration-status information: 1) they do not  
18 seek to discover the Claimants' date of birth, educational background,  
19 criminal history, or prior legal experience, but 2) they seek to  
20 discover, subject to a confidentiality order, the Claimants' marital  
21 status, business or social relationships with any potential non-Claimant  
22 witness or current or former employee of Defendants, use of other names  
23 while employed at the Grower Defendants, and H-2A visa application.

24 As to the undisputed matters, the Court grants the EEOC's motion in  
25 this regard. As to the disputed matters, the Court finds the Grower  
26 Defendants may discover the Claimants' marital status, use of other names  
while working at the Grower Defendants' orchards, and business or social

1 relationships with any potential non-Claimant witness or current or  
2 former employee of Defendants. The Claimants' marital status is relevant  
3 to claimed damages, and the Claimants' use of other names and business  
4 and social relationships are relevant to credibility. As agreed to by  
5 the Grower Defendants, these disclosures are subject to a confidentiality  
6 order.

7 At this time, the Court declines to require the Claimants to  
8 disclose whether they applied for a T visa and/or their T-visa status.  
9 As recognized by a number of other courts, a litigant's immigration  
10 status is typically undiscoverable simply for the purpose of challenging  
11 the litigant's credibility. See *Barrera v. Boughton*, No. 3:07cv1436(RNC),  
12 2010 WL 124094 (D. Conn. Mar. 19, 2010) (protecting the plaintiff's  
13 immigration status or alienage in a civil rights action); *David v. Signal*  
14 *Int'l, LLC*, 257 F.R.D. 114 (E.D. La. 2009) (preventing defendant's  
15 discovery of the guest-worker plaintiffs' immigration status because  
16 there was sworn testimony supporting the plaintiffs' allegations that  
17 they were subject to intolerable working conditions); *Sandoval v. Rizzuti*  
18 *Farms, Ltd.*, No. CV-07-3076-EFS, 2009 WL 2058145 (E.D. Wash. July 15,  
19 2009) (barring discovery of the litigant's immigration status because it  
20 was irrelevant to the federal and state law claims); *Montoya v. S.C.C.P.*  
21 *Painting Contractors, Inc.*, 530 F. Supp. 2d 746 (D. Md. 2008) (denying  
22 defendant's request to discover the plaintiff's immigration status to  
23 help support defendant's opposition to the motion for class certification  
24 in a Fair Labor Standards Act case); *Galviz-Zamora v. Brady Farms, Inc.*,  
25 230 F.R.D. 499, 502 (W.D. Mich. 2005) (protecting the plaintiffs'  
26 immigration status from discovery because the prejudice that plaintiffs  
would suffer outweighed the information's minimal credibility value).

1 *But see Catalan v. Vermillion Ranch Ltd. P'ship*, No. 06-cv-01043-WYD-MJW  
2 (D. Col. Mar. 28, 2007) (allowing discovery, subject to a protective  
3 order, into plaintiffs' immigration status and employment history after  
4 leaving the defendants' employment because the plaintiffs came to the  
5 United States under an H-2A visa and therefore were only permitted to  
6 stay in the United States while working for the defendant).

7       At this time, the Court determines that structuring discovery as to  
8 each Claimant is best to minimize any unnecessary prejudice that could  
9 be experienced by the Claimants if their T-visa status is disclosed to  
10 the Grower Defendants. Accordingly, the Grower Defendants are to first  
11 discover from those Claimants set to be deposed this December the alleged  
12 bases for their hostile-work-environment and constructive-discharge  
13 claims and related pattern-and-practice claims against the Grower  
14 Defendants as to orchard-related matters, as well as the alleged bases  
15 for their retaliation claim and related pattern-and-practice claim  
16 against Green Acre as to orchard-related matters. The Grower Defendants  
17 may also discover what information these deponents listed on their H-2A  
18 guest worker application regarding their work skills and qualifications  
19 and what work they are doing now. If after obtaining this information  
20 from these deponents, the Grower Defendants contend there is a need to  
21 compare or contrast the information received from that Claimant regarding  
22 their treatment by the Grower Defendants with that contained in the  
23 Claimants' T-visa application, the Grower Defendants may file a motion  
24 seeking such T-visa information for those identified Claimants together  
25 with discovery supporting the motion.

26       In summary, the EEOC's motion for protective order is granted in  
part and denied in part.

1 **E. November 26, 2012 Fax**

2 On the afternoon of November 26, 2012, the Court received a fax from  
3 the Grower Defendants, requesting that the Court hold a telephonic  
4 hearing to address the EEOC's November 20, 2012 Responses and/or  
5 Objections to the Grower Defendants' Interrogatories and Requests for  
6 Production of Documents. The Court agrees that an expedited hearing is  
7 necessary on this matter; however, the Court requires counsel to attend  
8 the discovery hearing on this matter in person. An in-person hearing is  
9 necessary to address the discovery responses point by point and to ensure  
10 that discovery proceeds in an orderly manner. The Court recognizes that  
11 the Grower Defendants desire a prompt hearing; however, given that the  
12 hearing must occur in person and the Court's trial calendar, the Court  
13 sets the hearing on December 12, 2012. In order to place this matter on  
14 the record, the Grower Defendants are to file the substance of the faxed  
15 document as a motion and set it for hearing on December 12, 2012, at 2:00  
16 p.m. in Richland.

17 The Court cautions counsel that all future discovery hearings will  
18 be held in person in Richland. The Court will also award reasonably-  
19 incurred attorney fees and costs to the prevailing party upon request.

20 **F. Conclusion**

21 For the above-given reasons, **IT IS HEREBY ORDERED:**

22 1. Grower Defendants' Motion to Compel Rule 26(a)(1) Disclosures,  
23 **ECF No. [201](#)**, is **DENIED AS MOOT IN PART** (damages disclosures),  
24 **GRANTED IN PART** (unrestricted disclosure of Claimants' names),  
25 **AND DENIED IN PART** (attorney fees and costs).

26 2. The EEOC's Motion for Protective Order Re: Immigration Status,  
Information Related to Immigration Status, and Identities of

1 Class Members, **ECF No. 217**, is **DENIED IN PART** (Claimants'  
2 marital status, H-2A guest worker applications, social  
3 relationships and/or living arrangements with any current or  
4 prior Defendants' employees, use of other names when employed  
5 at the Grower Defendants) **AND GRANTED IN PART** (remainder).

6 3. The Grower Defendants are to file the substance of their fax  
7 as a motion and may note it for hearing on December 12, 2012,  
8 at 2:00 p.m. in RICHLAND.

9 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this  
10 Order and provide a copy to all counsel.

11 **DATED** this 28<sup>th</sup> day of November 2012.

12  
13 S/ Edward F. Shea  
14 EDWARD F. SHEA  
Senior United States District Judge

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